IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.11 of 1997
Date of decision:22.11.2006

The Commissioner of Income Tax, Patiala.

....Petitioner

versus

The Haryana State Cooperative Marketing Federation Limited, Chandigarh

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Yogesh Putney, Advocate, for the revenue.
Mr. Jatin Sehrawat, Advocate for Mr. ML Garg, Advocate, for the assessee.

JUDGMENT:

Following question of law has been referred for opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh, arising out of its order dated 21.4.1993 in ITA No.707/Chandi/1988 in respect of assessment year 1983-84:-

> "Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that Society's income of Rs.2,12,43,892/- was exempt under section 80P(2)(a) of the Income Tax Act, 1961?"

The assessee derives income from commission on sales. The assessee claimed deduction under section 80P(2)(a)(iii) of the Income Tax Act, 1961 (for short, 'the Act') in respect of profits and gains derived from marketing of food-grains, which was rejected on the ground that the deduction was allowable only if marketing was of members of the society. The assessee being Apex Society, its members were societies who were neither farmers nor had their own farms. The CIT(A) upheld the claim of the assessee, which was further upheld by the Tribunal following judgment of this Court in **CIT v. Haryana State Cooperative Supply and Marketing**

Federation Limited, (1990) 182 ITR 53, following the view taken by the Tribunal in respect of earlier assessment year in the case of the assessee.

The issue has been gone into by this Court in ITR No.9 of 1989, **The Commissioner of Income Tax, Patiala v. The Haryana State Cooperative Marketing Federation Limited, Chandigarh,** decided on 26.9.2006 in the light of retrospective clarificatory amendment which has been upheld by the Hon'ble Supreme Court in **National Agricultural Cooperative Marketing Federation of India Limited and another v. Union of India and others,** AIR 2003 SC 1329 = (2003) 260 ITR 548.

In view of the above, the question referred is answered in favour of the revenue and against the assessee.

Reference is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

November 22, 2006 (Rajesh Bindal)
'gs' Judge